

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

NATIONAL COALITION FOR MEN and
JAMES LESMEISTER, individually and
on behalf of others similarly situated,

Plaintiffs,

v.

No. 4:16-cv-3362

SELECTIVE SERVICE SYSTEM;
DONALD M. BENTON as Director of
Selective Service System; and Does 1
through 50, inclusive,

Defendants.

**DEFENDANTS' UNOPPOSED EMERGENCY MOTION FOR CLARIFICATION
OR RECONSIDERATION AND REQUESTING STATUS CONFERENCE**

Defendants the Selective Service System and Donald M. Benton, in his official capacity as Director of the Selective Service System, are confused by the Court's scheduling order entered September 13, 2018, and respectfully move for clarification and reconsideration of the Court's order on an emergency basis. The parties also request a status conference to discuss the appropriate briefing schedule, if the Court believes such a discussion would be helpful in managing this litigation.

This case presents challenging questions of law regarding the constitutionality of the male-only registration requirement of the Military Selective Service Act, which will likely be resolved through the parties' cross-motions for summary judgment. Plaintiffs

filed their motion for summary judgment on August 22. After conferring with Plaintiffs, Defendants filed an unopposed motion for a modified briefing schedule on August 29 to facilitate efficient briefing of the cross-motions. ECF No. 74. The motion also requested extension of the dispositive motion cut-off date to coincide with the proposed due date of Defendants' opposition to Plaintiffs' motion for summary judgment. Defendants require the additional time to coordinate among officials at several agencies within the federal government, including senior administration officials. Plaintiffs concurred in the schedule Defendants proposed in that motion.

On September 13, the Court ruled that "Plaintiffs' motion for extension of time and to set briefing schedule (Dkt. 74) is GRANTED IN PART. It is therefore ORDERED that plaintiffs' response to defendants' motion for summary judgment is due on or before Thursday, September 20, 2018; defendants' reply is due within three days of the response."

Defendants are confused by the Court's order for several reasons. First, even though the Court noted it was granting the motion "in part," the order does not state what part of Defendants' motion was granted and what part was denied. Second, the order addresses "Plaintiffs' response to Defendants' motion for summary judgment," but Defendants have yet to file their cross-motion, which they plan to submit in conjunction with their opposition to Plaintiffs' motion for summary judgment. Third, the order does not address Defendants' request to extend the deadline in the docket control order for filing a dispositive motion so that Defendants can efficiently address, in a single combined memorandum, their motion for summary judgment and opposition to

Plaintiffs' motion for summary judgment. Fourth, the Court's order does not discuss the schedule for the motion for summary judgment Plaintiffs have already filed. Defendants therefore respectfully request clarification of this order.

Plaintiffs concur in Defendants' request for clarification of the Court's order and in the request for a status conference, should the Court conclude it is helpful in setting an appropriate briefing schedule in this matter. Plaintiffs also continue to concur in the scheduling order proposed in the previous unopposed motion, attached to this motion.

Defendants further request that the Court set the due date for Defendants' opening brief and motion to October 5, 2018, irrespective of what else the Court orders on scheduling. In addition to the need for consultations with senior administration officials noted above, counsel of record for Defendants has numerous professional and personal obligations over the next few weeks, including pre-planned family vacation on September 20-24 and September 28-30, and will require until at least October 5, 2018 to prepare the memorandum in support of its cross-motion for summary judgment and opposition to Plaintiffs' motion for summary judgment. Defendants are also willing to accept a more expedited due date for their final reply brief than the one initially set forth in the proposed order so as to obtain the necessary time to file their opposition motion while ensuring the motion is fully briefed before December.

For these reasons, Defendants respectfully request that the Court grant this unopposed motion for clarification and reconsideration.

Dated: September 14, 2018

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

ANTHONY J. COPPOLINO
Deputy Director, Federal Programs Branch

/s/ Michael J. Gerardi
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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2018, I electronically filed a copy of the foregoing. Notice of this filing will be sent via email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Michael J. Gerardi

MICHAEL J. GERARDI

CERTIFICATE OF CONFERENCE

I hereby certify that I conferred with plaintiffs' counsel about the relief requested in the foregoing and plaintiffs' counsel does not oppose the motion.

/s/ Michael J. Gerardi

MICHAEL J. GERARDI